IN THE

Supreme Court of the United States

No. 77-306

WILLIAM R. HALL, Petitioner-Defendant, vs. **PEOPLE OF THE STATE OF ILLINOIS,** Respondent-Plaintiff.	Review of the Appellate Court of Illinois, Fourth District. — No. 77-25

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

On October 27, 1975, a John Doe Search Warrant was issued for the search of the residence at 729 West Wood Street. The facts and circumstances, as stated in the warrant, were that John Doe had been in the residence at 729 West Wood Street on two different occasions and that on each occasion he observed a substance in the premises described to him by the occupant of the premises as being cannabis. He stated this substance also appeared to him to be cannabis. The Complaint for the Search Warrant was sworn to and signed by John Doe, a fictitious name, in the presence of Associate Circuit Judge Jerry L. Patton. Accompanying this Complaint for A Search Warrant of 729 West Wood Street, was a second Complaint for Search Warrant for an apartment at 731 West Wood Street, in which the same John Doe stated that he had been in those premises twice during the last seven days and on both occasions, observed a substance in the premises described to him by the occupant of the premises as being cannabis, commonly known as marihuana. He stated, in that Complaint, that he had observed the occupant of those premises sell a quantity of the substance to a third unknown person. He stated also that the substance appeared to him to be marihuana and that he had seen and smoked cannabis in the past. Both of these complaints for each premise were contained on the same Complaint for Search Warrant and signed by the said John Doe in the presence of Associate Circuit Judge Jerry L. Patton.

On the 28th of October, 1975, the search warrant was executed at 729 West Wood Street, and during the course of the search, police officers performing the search discovered a quantity of cannabis and seven red capsules in a

plastic bag. Part of the cannabis was discovered in the top drawer of a dresser in the bedroom. In that same drawer were found the seven red capsules in the plastic bag. See the Stipulation of Facts entered into between the defendant, William Hall, and the People of the State of Illinois. (C. 35)

The the time of the search, the police officers discovered the owner and occupant of the apartment searched was William R. Hall, rather than the person named in the Complaint for Search Warrant, David Weller. William R. Hall was charged with the offense of Unlawful Possession of Cannabis, as was Mark Erbes and Robert Schellenbruch who were present with him in the apartment at the time of the search. Subsequently, Mark Erbes and Robert Schollenburch were dismissed as defendants in the information at Preliminary Hearing. The seven red capsules were determined to be Ethclorvynol. William R. Hall was charged with Unlawful Possession of A Controlled Substance.

A Motion to Suppress Evidence was filed by defendant's counsel along with two supplemental motions to suppress. The substance of the motions to suppress were that the search of the premises at 729 West Wood Street was not based upon a complaint setting forth probable cause, that the Complaint for Search Warrant contained false information, in that it indicated that David Weller resided at 729 West Wood Street when actually the apartment at that address was occupied and possessed by William R. Hall, and third, that the Complaint for Search Warrant was defective, in that a fictitious name was used by the complainant.

A hearing was held on December 2, 1976, at which no evidence was presented and counsel presented argument as to the substance of the motion to suppress. The Court,

during the hearing, indicated that it was not going to redetermine the credibility of the informer on the John Doe Complaint, and the Court found, without question, that the Complaint for the Search Warrant was sufficient. (R. 20) The Court also determined that the identity of John Doe was to be protected. (R. 8) That the statement that John Doe was in the apartment within seven days was not too remote, (R. 18), and that the officers executing the search warrant did not go beyond the scope of the warrant. (R. 22, 23, 24) All of said findings by the Court were based upon the face of the Complaint for Search Warrant and argument of counsel, no evidence having been presented by defense counsel or by the People at the Motion to Suppress Evidence.

The defendant, William R. Hall, on December 16, 1975, was convicted of the offenses of Unlawful Possession of Cannabis, more than 30 grams but not more than 500 grams, and Unlawful Possession of A Controlled Substance, Ethclorvynol. A finding of guilty was entered after a stipulated bench trial in which the only evidence presented were the facts contained in a written stipulation. Whereupon, the defendant was sentenced to a period of two-to-ten years for Unlawful Possession of A Controlled Substance, and one-to-three years for Unlawful Possession of Cannabis, said sentences were to run concurrently.

REASONS FOR DENYING THE WRIT

I.

THE TRIAL COURT DID NOT COMMIT ERROR IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE.

The defendant argues that the Trial Court Judge, Rodney A. Scott, committed error by refusing to hear his Motion to Suppress Evidence based on insufficiency of the

warrant. The Court did not refuse to hear the Motion, it stated it would not determine the reliability of the witness, and the Court, after reviewing the face of the Complaint and hearing argument of counsel, found that the Complaint, on its face, was sufficient for issuance of the warrant. (R. 60) The Court only indicated that it was not going to act as an appeal court in determining whether the judge issuing the warrant had sufficient facts to determine the reliability of the witness or the reliability of the information supplied. The Court did determine that there were sufficient facts on the face of the Complaint for the Warrant to issue. (R. 20)

The defendant next argues that the Complaint, containing in actuality two Complaints for Search Warrant, was insufficient to support the search of the residence at 729 West Wood Street which was occupied and possessed by the defendant. His argument centers around the fact that at the second residence named in the Complaint for Search Warrant, the informant made statements that while at 731 West Wood Street, he saw the occupant of those premises make a sale of the marihuana, while in the Complaint for the Search Warrant of 729 West Wood Street, no such allegation was made. He, therefore, argues that there were insufficient facts in the Complaint for a judge to determine there was still cannabis present at 729 West Wood Street; but the warrant itself states that the informant was present at 729 West Wood Street on two different occasions within the last seven days. On each of those occasions, he saw the cannabis present in the apartment, that the occupant in the apartment told him each time that the substance was cannabis, and that the informant stated that the substance appeared to him to be cannabis. The defendant argues that without alleging prior sale, distribution, or the presence of substantial quantities in the Complaint for 729

West Wood Street, a cautious and reasonable person could not reasonably determine that said substance was still in the apartment. The defendant complains that without this alleging of prior sale or large quantities being present, the Complaint for the Search Warrant was insufficient and lacking probable cause. His chief argument is that when a search warrant is issued upon a complaint based on hearsay testimony, which he evidently feels is the case here, a judge must have a substantial basis for leading cerdibility to both the evidence and the informant. He then equates a large quantity of marihuana or the sale of marihuana to the substantial basis for the judge to lend credibility to the evidence and the witness, when actually the amount of marihuana involved or whether it has been sold or not, is irrelevant to the fact of whether there is sufficient cause to believe it may still be present in the premises. The defendant relies on *McCurry* v. *State,* 231 N.E. 2d 227, a 1967 Indiana case for authority. His argument is completely without merit as the search warrant issued in the case before the court was not based upon heresay information. The informant himself apeared before the judge issuing the warrant and the judge determined that the informant was credible and the information was reliable. Where in *McCurry* v. *State,* the complainant was a police officer whose information, stated in the Complaint, came from an informant who did not sign the Complaint or appear before the issuing magistrate.

In *People* v. *Bak,* 35 Ill. 2d 140, 258 N.E. 2d 341 (1970), which states the law in Illinois. The Illinois Supreme Court holds that a judicial officer need find only probable cause for the issuance of a search warrant on the evidence presentered to him under oath. In the case before the Court, the issuing judge had the affiant before him and was able to determine his credibility for himself and the evidence with

which he was presented was more than sufficient for him to find probable cause. That evidence being: that the affiant had been in the apartment on two different occasions within seven days prior to the warrant, that on each of these occasions he saw a substance which appeared to him to be marihuana, having seen and used marihuana himself, and that the occupant of the apartment told him on each occasion that the substance was marihuana. From these facts, I submit, a judge has more than sufficient basis to find probable cause to issue a search warrant if the credibility of the informant is proved and, here, the judge was able to judge the credibility of the informant for himself.

Defendant next contends that the fact that on one occasion contraband was observed at a certain place does not establish that it would still be there several days later. He cites an Indiana case, *Ashley* v. *State,* 241 N.E. 2d 264, 269 (1967), in which the Indiana Supreme Court determined that a period of eight days between the time of the observing the contraband and the time of the complaint is too remote for there to be any determination that the contraband or material is still present in the premises. Based on this Indiana decision, defendant asks this Court to determine that an informant's statement that he had been inside an apartment, twice within seven days, and observed on each occasion the contraband material, makes it too remote for a judge to determine that the substance was still in the apartment. There has been no determination as to what amount of time, between the time of the Complaint and the time of observations, which would make the information too remote for finding a probable cause, but the Illinois Supreme Court, in *People* v. *Montgomery,* 27 Ill. 2d 404, 189 N.E. 2d 327 (1963), held that eight days was not too much time to make it too remote to find probable cause. The informant, in this case, had been there on two

separate occasions within seven days and on each of these occasions the marihuana was present. This is a sufficient fact for a court to determine that the marihuana was probably still in the apartment.

The defendant also contends that the fact that there were two specific places named in the Complaint for the search warrant, with separate facts and, therefore, two specific Complaints, if one of those Complaints does not show sufficient cause for the issuance of the search warrant, the search warrant itself must fail and a search of either of the apartments would be illegal, and any evidence obtained would be inadmissible. Defendant's position is that the search warrant naming 731 West Wood Street alleged a sale or distribution of the marihuana and concedes the search warrant may be sufficient for the search of 731 West Wood Street, as additional facts are given which would lead a reasonable person to believe that some of the marihuana may still be in the premises. He contends, however, that at 729 West Wood Street, there are no such facts as a distribution or sale of marihuana or allegation of a specific large quantity from which a court could determine that the marihuana may still be on the premises and, therefore, the warrant must fail, but as stated earlier, there need be no specific allegation as to a sale or specific large quantities, only probable cause that the contraband was there. The presence, in any premises, of any quantity of marihuana is sufficient for the issuance of a warrant so long as there is a sufficient basis for a court to determine that the evidence is reliable and the person supplying the evidence is credible. *People* v. *Bak,* supra. To support his argument, the defendant relies on *People* v. *Rainey,* 197 N.E. 2d 527 (1964), which dealt with the problem of a warrant being issued to search a building containing multiple residences. The warrant gave the address and appoxi-

mate location of the building. Police officers went to the building and when they arrived they found two different apartments in the building. The police officers searched both of the apartments and in the front apartment found the contraband for which they were looking. The Court found that the search was an invalid search since the warrant did not specifically name the apartment for which they were to search. In our Complaint naming the residences of 729 and 731 West Wood Street in Decatur, Illinois, each of the residences were specifically described and there was probable cause as to the issuance of a search warrant for the search of each of the premises. The fact that the complainant did not observe the sale of marihuana at 729 West Wood Street has no significance to whether there was probable cause or not, the only difference between 729 and 731 West Wood Street being that there were facts establishing other crimes at 731 West Wood Street.

The defendant further argues the seizure of anything other than the marihuana named in the warrant was illegal, naming specifically the seven red capsules found by the police during the search of 729 West Wood Street. He claims that since the red capsules were not named in the search warrant as a substance to specifically be seized, that the police officers went beyond the scope of the warrant, therefore, the evidence of these capsules was inadmissible and should be suppressed, as they were not in plain view or shown to be found by the police as a result of a lawful search and seizure without a warrant. At the Motion to Suppress Evidence, the defendant did not present any evidence showing that the police officer did not make the search in good faith or went beyond the scope of the warrant. The police officers, when they went to the apartment at 729 West Wood Street, went there under the authority of a warrant and made a search pursuant to that warrant. During the

course of that search, they wound not only what they were looking for, the marihuana named, but also found the seven red capsules. These seven red capsules were found in the same drawer in which the police officers found marihuana, as stated in the stipulation of facts presented at trial. It is the law in Illinois that where police officers have prior justification for a search, in the course of which they inadvertently discover other items which are apparent to the officers as being evidence of other crimes, they may seize these items inadvertently discovered. See, *People* v. *Philyaw,* 339 N.E. 2d 461 (1975); *Coolidge* v. *New Hampshire,* 403 U.S. 433, 91 S. Ct. 20, 22, 29 L. Ed. 2d 564, as long as the search by the police officers is directed in good faith. See, *Warden* v. *Hayden,* 387 U.S. 294, 87 S. Ct. 1642, 18 L. Ed. 2d 782. The officers, therefore, in the apartment at 729 West Wood Street pursuant to a search warrant, were at a place where they had a right to be and while there, they performed a search pursuant to the warrant searching for marihuana which the warrant stated was to be seized, and while performing the search, found marihuana in a dresser drawer in the bedroom and also found seven red capsules in a plastic bag in the same drawer. This inadvertent discovery by the officers during the search of 729 West Wood Street revealed to them a substance which apparently to them was contraband. They, therefore, were perfectly within their rights to seize this substance. Therefore, the seizure of the seven red capsules was a lawful seizure and the refusal of the trial judge to suppress this evidence was proper.

II.

THE TRIAL COURT DID NOT COMMIT ERROR IN REFUSING TO ORDER DISCLOSURE OF THE IDENTITY OF THE JOHN DOE INFORMANT.

Defendant claims the use of a fictitious name on the Complaint for Search Warrant renders the Complaint void. He cites *U.S. ex rel. Pugh* v. *Pate,* 401 F. 2d 398 (1968). Such is the rule in the Federal District Court, but the Illinois Supreme Court has ruled that such a search warrant in the State of Illinois is a valid warrant. See, *People* v. *Stansbury,* 47 Ill. 2d 541, 268 N.E. 2d 431 (1971).

Defendant's final contention is that the trial court's refusal to have the State name the informant to the Complaint for the Search Warrant was error under *People* v. *Rivera,* 130 Ill. Ap. 2d 321, 264 N.E. 2d 699 (1970). *People* v. *Rivera* states that a search warrant, which is issued pursuant to a complaint by a undisclosed informant, is a valid warrant, but that the trial judge should order the State to disclose the informant where there is a showing of fundamental unfairness or prejudice to the defendant. The defense counsel claims that the fact the Complaint for the Search Warrant stated that David Weller was the occupant of the premises at 729 West Wood Street was incorrect information, therefore, they had a right to the name of the undisclosed informant for the purpose of challenging the veracity of the entire Complaint. There was no other showing or evidence presented by defendant to show fundamental unfairness or prejudice to him. The only thing shown by defendant is that the Complaint for the warrant named David Weller as the occupant of the premises when actually William R. Hall was determined to be the occupant of the premises. This, in and of itself, is not a showing of fundamental unfairness to the defendant or prejudice. The

informant stated that he had seen the contraband at a specific place on two occasions within seven days. This he testified to under oath before the issuing judge. The police went to this specific place and found the items which were named in the warrant. The fact that the person named in the warrant was not there or was not shown to have been an occupant of the premises is completely irrelevant and immaterial to the cause against William R. Hall, since William R. Hall was discovered to be the occupant of the premises. In his argument, the defendant claims that the City of Decatur Police Department had arrested David Weller prior to the search at 729 West Wood Street, at which time David Weller gave a different address, that being 747 Oakridge Drive. Therefore, the police officers should have known that the premises in question did not belong to David Weller, and being aware of this, knew that the search warrant was incorrect. This showing, by itself, shows no prejudice or fundamental unfairness to the defendant, as David Weller may have been a constant visitor to the apartment, or in some way was connected with William R. Hall and with the items which were found in the apartment. And without this showing of prejudice or unfairness, the identity of the informer should be protected, and the discovery that the department belonged to William R. Hall instead of David Weller in no way prejudiced the defendant. The Court, therefore, had no other alternative than to determine disclosure of the unnamed informant would not be allowed.

CONCLUSION

For the foregoing reasons, respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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